

NTSB Order No. EA-4977

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 31st day of May, 2002

Respondent .

Docket SE-16324

Respondent appeals from the oral initial decision of Administrative Law Judge William A. Pope, II, issued on October 10, 2001, following an evidentiary hearing.¹ By that decision, the law judge affirmed the Administrator's finding that respondent violated sections 121.563 and 121.628(a)(5) of the Federal Aviation Regulations ("FARs"), and upheld the 15-day suspension sought by the Administrator of respondent's airline

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transport pilot ("ATP") certificate.²

The Administrator's allegations stem from an in-flight observation conducted by FAA Inspector Michael Griffiths aboard DHL Flight 108, a Boeing 727 operating from Los Angeles to Phoenix. Respondent was the pilot-in-command of Flight 108. Sometime after pushback, but prior to takeoff, Inspector Griffiths reported to the crew that he could not hear ATC transmissions over his headset. The Flight Engineer, William Wyler, according to Wyler's uncontradicted testimony, handed Inspector Griffiths, who had been using his personal headset, another headset already aboard the aircraft. Inspector Griffiths

² FAR sections 121.563 and 121.628, 14 C.F.R. Part 121, provide, in relevant part, as follows:

§ 121.563 Reporting mechanical irregularities.

The pilot in command shall ensure that all mechanical irregularities occurring during flight time are entered in the maintenance log of the airplane at the end of that flight time. Before each flight the pilot in command shall ascertain the status of each irregularity entered in the log at the end of the preceding flight.

§ 121.628 Inoperable instruments and equipment.

(a) No person may take off an airplane with inoperable instruments or equipment installed unless the following conditions are met:

* * * * *

(5) The airplane is operated under all applicable conditions and limitations contained in the Minimum Equipment List and the operations specifications authorizing use of the Minimum Equipment List.

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again reported that he was not able to receive any audio signal. Respondent, with Inspector Griffiths's and the crew's concurrence, activated the cockpit speaker and said they would deal with the problem later.³ After arrival in Phoenix, where Flight 108 had a 30-minute stop-over before continuing to Cincinnati, Inspector Griffiths, who had completed his duties, left the aircraft. During the stop in Phoenix, according to respondent and Flight Engineer Wyler, Wyler, at respondent's direction, checked the observer's audio panel, and, contrary to Inspector Griffiths's reports, found it to be functioning properly.⁴ Unable to find a problem, respondent did not make an entry about the observer's panel in the aircraft's maintenance logbook.⁵

According to the unrebutted testimony of Wyler, it is standard practice, in light of the short turn-around times

³ According to Flight Engineer Wyler's testimony, which was corroborated by respondent and, somewhat, by Inspector Griffiths, respondent pre-empted Wyler's initial thoughts of trying to fix the problem, because, as Wyler explained, "there's not really time to be troubleshooting" during the very short taxi to the runway.

⁴ Wyler, in fact, testified that he listened to an entire ATIS broadcast over the observer's audio panel without any problem.

⁵ Respondent and Wyler testified that it was common to have jumpseat riders who were not familiar with the operation of the observer's audio panel. In respondent's words, "I had no idea what the problem was, the operator or the headset." Wyler similarly testified regarding the crew's check of the observer's audio in Phoenix: "It worked. The only indication we had that it had a problem was Inspector Griffiths. And with no disrespect to him, we have a lot of jumpseaters get on board that want to listen in, and don't properly operate the audio panel."

available at Cincinnati, for DHL crews to radio ahead any discrepancies. When, in accordance with this practice, Wyler queried the other crew if they had any discrepancies to report, respondent asked Wyler to check the observer's audio panel again. Respondent explained that although they had checked the observer's audio panel in Phoenix and found it to be functioning properly, "[t]here was a crew change in Cincinnati [and] I thought it would be prudent to have my second officer check it one more time." This time, Wyler found that the audio panel functioned properly only intermittently. Accordingly, upon arrival in Cincinnati, respondent made an entry about the discrepancy in the aircraft's maintenance logbook.⁶

The gravamen of the Administrator's complaint is that respondent should have made the logbook entry regarding the observer's audio problems before departing Phoenix. She argues that, given Inspector Griffiths's report to the crew that he was having problems receiving audio via the first observer's station, their subsequent inability to find a problem with the audio panel meant that, at best, the audio panel was functioning only intermittently. The law judge agreed and affirmed the Administrator's charges, concluding that the report of difficulties with the observer's audio "was made in the

⁶ The logbook entry stated: "Unable to receive any transmission from either radio when using first observer's headset jack. (Several headsets tried.)" DHL mechanics repaired the discrepancy by replacing a faulty wire found in the headset plug associated with the observer's audio panel.

performance of the Inspector's official duties, and therefore could not just be ignored by respondent." After careful review of the entire record, we disagree with the law judge's conclusion that the preponderance of the reliable and probative evidence supports the Administrator's charges.

Contrary to the law judge's assertions, we do not think the record supports the notion that respondent "ignored" Inspector Griffiths's report of problems with audio reception from the observer's seat. Respondent clearly has an obligation to make cogent entries in the aircraft maintenance logbook, and, obviously, it is necessary to examine the nature of a reported problem in order to effectively describe it in the logbook entry. Respondent's decision not to make an entry after a qualified member of his crew reported, contrary to reports from an Inspector whose aircraft-specific qualifications were unknown, that the observer's seat audio panel was functioning normally was, under the circumstances, reasonable.⁷ Compare Administrator v. Schoppaul, 7 NTSB 1195, 1197-1198 (1991) (where we upheld a FAR section 121.563 charge for failing to log as a discrepancy abnormal "meshing" or "ratcheting" sounds that both pilots of a DC-8 aircraft had firsthand knowledge of and which clearly had the potential to negatively affect safety of flight, stating "[i]f respondent had even a 'small worry' [internal citations

⁷ Even the Administrator's expert witness testified that even "if the audio panel were inoperative, the safety of the operation of the aircraft would be in no way threatened."

omitted] about the sound and feel in the control column, he should not have usurped the duties of [the operator's] maintenance personnel by depriving them of the opportunity to determine whether or not the problem was in fact inconsequential"). Respondent, and his crew, testified that, after Wyler discovered the observer's audio panel was functioning properly in Phoenix, they believed the problems reported by Inspector Griffith were likely the result of his unfamiliarity with the panel. In short, we think the preponderance of the evidence supports respondent's testimony that the crew made a good faith determination in Phoenix that no discrepancy existed, and, therefore, we reverse the law judge's decision and dismiss the Administrator's Order of Suspension.⁸

⁸ The law judge did not make a credibility determination against respondent's testimony that he believed the observer's audio was functioning properly before departing Phoenix. See Administrator v. Smith, 5 NTSB 1560, 1563 (1986) (the Board defers to credibility assessments of its law judges unless clearly erroneous). Moreover, we think Flight Engineer Wyler's testimony about why the crew again checked the observer's audio while airborne and inbound to Cincinnati, as well as respondent's testimony, indicates a responsible approach to an unspecified and unverified report of problems with the panel. We do not agree with the law judge's observation that "[i]t is not consistent with [respondent's] actions that he did not have the smallest worry that the Inspector was right ... because otherwise he would not have had the second officer check the observer's audio panel yet again before the aircraft landed in [Cincinnati]." Indeed, the un rebutted testimony indicates that there was no logistical or other incentive for respondent to delay the alleged discrepancy until Flight 108 arrived in Cincinnati. DHL had qualified mechanics in Phoenix that could have repaired or readily placarded the observer's audio panel as inoperative under the aircraft's minimum equipment list before departing Phoenix if the crew felt there was a problem and logged the discrepancy. We think that double-checking the unit's operation, out of deference to the inspector's report, reflects a responsible follow-up to
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ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is granted;
2. The law judge's initial decision upholding the Administrator's Order of Suspension is reversed; and
3. The Administrator's Order of Suspension is reversed.

BLAKEY, Chairman, CARMODY, Vice Chairman, and HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

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unverified reports of a non-safety-related and unconfirmed problem.